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June 27, 2013

**BY HAND DELIVERY**

Office of the General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: *MUR 6711*

Dear Sir or Madam:

This response is respectfully submitted on behalf of Respondent Adam Brandon to the Amendment to Complaint ("Amended Complaint") filed on April 24, 2013 in the above-referenced Matter Under Review.<sup>1</sup>

The Amended Complaint fails to meet the statutory and regulatory elements required for the Commission to find reason to believe that Mr. Brandon violated 2 U.S.C. § 441f. First, the Amended Complaint fails to allege facts that, if proven true, amount to a reason to believe that Mr. Brandon committed any violation of law. And second, the Amended Complaint is based entirely on non-specific allegations against Mr. Brandon made by anonymous sources in a single December 25, 2012 *Washington Post* story. Such complaints violate the text and spirit of 2 U.S.C. § 437g(a)(1), which prohibits the Commission from conducting investigations based solely on anonymous complaints. The Amended Complaint therefore should be dismissed and the Commission should close this matter without further action.

**BACKGROUND**

On December 20, 2012, Complainants filed a Complaint alleging that Mr. William Rose, two business entities, and various John and Jane Does who made contributions to FreedomWorks for America may have committed violations of the Federal Election Campaign Act (FECA). On April 24, 2013, the Amended Complaint was filed naming Adam Brandon as an additional Respondent and attaching a single *Washington Post* article. The article largely focuses on what it describes as a "fight between old and new guard" at FreedomWorks.

<sup>1</sup> This response is timely filed based on extensions of time granted by the Office of General Counsel on May 10 and June 12, 2013.

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Mr. Brandon currently serves as Executive Vice President of FreedomWorks, a non-profit organization headquartered in Washington, D.C. Although FreedomWorks operates a separate Political Action Committee and a so-called super PAC, the organization's chief focus is grassroots organizing and advocacy on various issues. See <http://www.freedomworks.org/about/about-freedomworks>.

The information contained in the Amended Complaint comes solely from statements of anonymous sources cited in a *Washington Post* article. Am. Compl. ¶ 2 and attached *Washington Post* Article. According to the Amended Complaint/article, Mr. Richard Stephenson is alleged to have been the source of approximately \$12 million contributed to FreedomWorks, and the \$12 million in donations allegedly "originated with Stephenson and his family, who arranged for the contributions from [two] Tennessee firms to the super PAC." *Id.*

With respect to Mr. Brandon, the Amended Complaint/article contains two bare allegations attributed to anonymous sources:

- (a) Mr. Brandon allegedly "told colleagues starting in August that Stephenson would be giving between \$10 million and \$12 million"; and
- (b) Mr. Brandon allegedly "also met repeatedly with members of Stephenson's family who were involved in arranging the donations." *Id.*

The Amended Complaint then alleges that on the basis of these two statements "there is reason to believe that by arranging these contributions, FreedomWorks and Mr. Brandon *may* have violated section 441f by knowingly accepting contributions by Mr. Stephenson in the names" of the two Tennessee corporations. *Id.* ¶ 5 (emphasis added).

### DISCUSSION

The Commission should dismiss the Amended Complaint because it fails to allege facts that, even if proven true, amount to a reason to believe that Mr. Brandon committed any violation of 2 U.S.C. § 441f. The Commission should also dismiss the complaint because it is based entirely on non-specific allegations made by anonymous sources. These allegations run afoul of 2 U.S.C. § 437g(a)(1)'s prohibition against anonymous complaints to support a "reason to believe" finding.

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**A. THE BURDEN IS ON COMPLAINANTS TO STATE FACTS THAT, IF PROVEN TRUE, CONSTITUTE A VIOLATION OF THE FECA.**

The Commission may not initiate an investigation unless “complainants ... provide the Commission with a reason to believe violations occurred.” MUR 4850 (Deloitte & Touche, LLP, *et al.*) Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas, at 2; *see* 2 U.S.C. § 437g(a)(2). In turn, “the Commission may find ‘reason to believe’ only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA.” MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, *et al.*), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas, at 1; *see* 11 C.F.R. § 111.4(d)(3) (establishing that a complaint “should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction”).

In other words, “[t]he RTB standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges.” MUR 6056 (Protect Colorado Jobs, Inc., *et al.*), Statement of Reasons of Vice Chairman Matthew S. Peterson and Commissioners Caroline C. Hunter and Donald F. McGahn, at 6 n. 12.

Placing the burden on the Complainant is a critical part of the statutory and regulatory complaint process. Were mere allegations sufficient, the burden of proof would be on the *respondent* (not the Complainant) to demonstrate that the “reason to believe” standard is *not* met — the exact opposite of the Commission’s clear standard. MUR 4850 (Deloitte), at 2 (“The burden of proof does not shift to a respondent merely because a complaint is filed.”) Accordingly, “[m]ere ‘official curiosity’ will not suffice as the basis for FEC investigations.” *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981). The Amended Complaint amounts to nothing more than an attempt by Complainants to inappropriately shift the burden to Mr. Brandon to prove that the Commission should not investigate this matter further.

**B. THE COMPLAINANTS HAVE NOT MET THEIR BURDEN.**

As an initial matter, the Complainants themselves do not take the position that there is reason to believe that Mr. Brandon violated Federal election law. Rather the Complainants write that “there is reason to believe” that Mr. Brandon “*may* have violated” the law. Am. Compl. ¶ 5. Whatever that means, it is even less than is required by the “reason to believe” standard. 2 U.S.C. § 437g(a)(2) (requiring the Commission to find that it “has reason to believe that a person

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*has committed . . . a violation of this Act.”*) (emphasis added). Were these vague allegations of possible wrongdoing sufficient under the Commission’s reason to believe standard, Mr. Brandon would be required to prove, as a negative, that wrongdoing did *not* occur. This is not, and never has been, the law. Complainants’ weak and legally insufficient allegation that there is reason to believe Mr. Brandon *may* have violated the law is telling. It is a strong indication that even Complainants understand that they have not alleged sufficient specific facts against Mr. Brandon to demonstrate that there is reason to believe that Mr. Brandon *did* violate section 441f. The Amended Complaint constitutes nothing more than an invitation to the Commission to engage in burden shifting and an inappropriate fishing expedition based on the sort of “official curiosity” that the Commission and courts have long rejected. Because Complainants have not alleged that there is reason to believe that Mr. Brandon actually violated the law, the Commission should dismiss the Amended Complaint on that basis.

Even setting aside the Amended Complaint’s initial critical flaw, the Amended Complaint should be dismissed because it fails to allege specific facts that, if proven true, would constitute a violation of the law. The Amended Complaint makes only two anonymous allegations against Mr. Brandon. First, the Amended Complaint/article states that Mr. Brandon “told colleagues starting in August [2012] that Stephenson would be giving between \$10 million and \$12 million” to FreedomWorks. Second, the Amended Complaint/article states that Mr. Brandon “met repeatedly with members of Stephenson’s family who were involved in arranging the donations.” Neither of these statements, taken alone or together, however, connects Mr. Brandon in any way to knowingly receiving or even “arranging” any contributions in violation of Section 441f. Significantly, the Amended Complainant’s bare and unsupported allegation that Mr. Brandon was involved in “arranging these contributions” is nowhere to be found in the *Washington Post* article, which limits any alleged involvement in “arranging the donations” to “members of Mr. Stephenson’s family.” Am. Compl. ¶¶ 2 and 5.

Giving the Amended Complaint a far more generous reading than the law requires, this reference to “arranging” the donation appears to be a reference to 11 C.F.R. § 110.4(b)(1)(iii), which prohibits “help[ing] or assist[ing] any person in making a contribution in the name of another” in violation of section 441f. The Commission has further interpreted this rule to prohibit “significant participation in a plan or scheme to make a contribution in the name of another.” See *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

Even if a single newspaper article based on anonymous sources were an appropriate source of facts for a complaint (and it is not), no matter how hard one looks, the article does not

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provide any facts connecting Mr. Brandon to any alleged "plan" that potentially violated section 441f, and certainly not any "significant participation" in such a plan.

**C. THE COMPLAINT SHOULD BE DISMISSED FOR THE ADDITIONAL REASON THAT IT IS BASED SOLELY ON ANONYMOUS SOURCES.**

The Amended Complaint should also be dismissed as legally deficient because the only allegations it offers against Mr. Brandon come from anonymous sources in the *Washington Post* story. Both statute and the Commission's regulations preclude the Commission from undertaking an investigation based on anonymous complaints. 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4(d)(2). This requirement equally holds where (as here) the sole basis for a complaint filed by a named complainant is a newspaper article citing exclusively to anonymous sources. The letter and spirit of section 437g(a)(1), as well as the Commission's own precedents, therefore require dismissal of the Amended Complaint.

The FECA expressly requires that complaints to the Commission be "signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury." 2 U.S.C. § 437g(a)(1). This is for good reason. The purpose of this requirement is to ensure that those who file complaints with the Commission do so on the basis of reliable facts in their possession, including credible information gleaned from trustworthy sources, and not by anonymous individuals whose existence cannot be verified and whose veracity or motives cannot be tested. To allow otherwise would, for example, permit political opponents to levy baseless charges designed to achieve political ends and do so without accountability.

Consistent with this policy, section 437g(a)(1) also states that the "Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission." The purpose of this prohibition on anonymous complaints is to ensure that the Commission can identify sources of information and assess their reliability when making a reason to believe finding. *See* MUR 6296 (Kenneth R. Buck, *et al.*), Statement of Reasons of Vice-Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, at 5-6 ("[T]he Commission must identify the sources of information and examine the facts and reliability of those sources to determine whether they 'reasonably [give] rise to a belief in the truth of the allegations presented.'"). *See also* MURs 5977 and 6005 (American Leadership Project, *et al.*) Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, at 6, n.20 ("[A]dherence to the Commission's regulations regarding sources of information contained in complaints cautions against accepting as true the statements of

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anonymous sources, (especially since the Commission's regulations expressly prohibit consideration of anonymous complaints.")).

In this matter, Complainants have no first-hand knowledge of any of the alleged facts in their Amended Complaint against Mr. Brandon. Instead, they rely on anonymous sources in the *Washington Post* story, whose statements to a newspaper reporter cannot be verified or tested. If Complainants, Respondents, and the Commission cannot assess or test the credibility of these purported sources, they should be given no weight, and the Commission should find no reason to believe that a violation occurred here.

In short, there is no meaningful difference between the allegations in the Amended Complaint and those that would be made in an anonymous complaint. Complainants should not be permitted to subvert section 437g(a)(1)'s prohibition on anonymous complaints simply by signing their name to a complaint that contains only anonymous allegations. To permit a reason to believe finding in such circumstances would be inconsistent with the law, Commission precedent and fundamentally unfair to Mr. Brandon. Accordingly, there is no legal basis for finding a reason to believe that Mr. Brandon committed a violation of section 441f.

\* \* \*

For the foregoing reasons, Mr. Brandon respectfully requests that the Commission find no reason to believe that he violated the law, dismiss the Amended Complaint against him with no further action taken by the Commission, and close the file.

Sincerely,



Brian A. Benczkowski

Brigham Q. Cannon

Counsel for Respondent Adam Brandon